IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11735 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KARSANBHAI HETHIBHAI MAHER - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR SN SINHA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 5.
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA
Date : 08/12/2005

ORAL JUDGMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner has sought the relief of third higher grade in the rank of Police Inspector from due date with consequential relief, arrears of difference in pay and allowance and arrears of revised pension with interest.

2. The relevant facts, in brief, are that the petitioner was appointed as Unarmed Police Constable in Ahmedabad Rural District on 2.10.1948 and was confirmed on 2.10.1950. Admittedly and according to his service-book, he was promoted as Unarmed Head Constable (UHC Gr.III) on 4.6.1963 and further promoted on 9.6.1972 as UHC Gr.I. Thereafter, on 14.3.1975, he was promoted to the post of Police Sub Inspector and placed in the appropriate pay scale. He retired from the service in the rank of P.S.I. On 30.9.1988.

3. The petitioner has claimed benefit of the resolution dated 16.8.1994 under which the Scheme of granting the higher pay scale is revised ab-initio with effect from 1.6.1987. According to the express stipulation contained in para 3 of the resolution, the next higher pay scale is required to be given after stagnation in the same pay scale for 9 years as on 1.6.1987 or afterwards as and when the employee completes 9 years in the same pay scale. Such benefit is subject to the condition that the employee must not have previously got two or more promotions or higher pay scales. It is again clarified in para 3.2 that the first higher pay scale is to be allowed after completion of service of 9 years to such employees who have not been previously promoted two or more times.

4. Besides the above clear factual and legal position, the Dy.S.P., Junagadh has in his affidavit clearly stated that the petitioner was

appointed as Unarmed Police Constable on 2.10.1948, he was promoted to the post of Third Grade Head Constable on 5.6.1963, as Second Grade Head Constable on 18.1.1967, as First Grade Head Constable on 9.6.1972 and was promoted to the post of Police Sub Inspector on 14.3.1975 which was the fourth promotion obtained by the petitioner. The petitioner was accordingly not entitled to and denied the benefit of the aforesaid resolution and the scheme of the next higher pay scale after completion of 9 years in the same pay scale.

5. Learned counsel Mr. Sinha vehemently argued that the promotions of the petitioner from Gr.III to Gr. II or Gr. I in the cadre of Head Constable were not promotion in reality but adjustment done in view of the administrative exigencies of the department. He relied upon the judgment of this Court in *Dyandev Mahadu Sonar & Ors. vs. State of Gujarat and Ors* reported in XXXIX*(2) GLR 1214*, wherein the petitioner was absorbed in the higher grade and the assertion of the petitioner that he had earned only two promotions was not denied. Whereas in the facts of the present case, not only that assertion of the petitioner is denied but the respondents have claimed that the petitioner had already obtained four promotions during the relevant period. Those facts are also recorded in the service-book of the petitioner. The burden of argument of the learned counsel was that earlier grant of higher pay scales were not in fact promotions and ought not to have been counted as promotions. The argument cannot be accepted since it is too late in the day for the petitioner to assert

that the grant of promotions recorded as such in his service-book at the relevant time were in fact only re-adjustments.

6. The other argument of the learned counsel based on affidavit-in-rejoinder of the petitioner was that in identical cases of other retired employees with similar service details, the benefit of next higher pay scale was granted. In support of that argument, he has relied upon an office order dated 4.10.1995 retrospectively granting the higher pay scale to two other PSIs. Although the respondents have not filed any affidavit-in-reply in that regard. It was submitted by the learned AGP that those two officers had, according to the order dated 4.10.1995 itself, not obtained two or more promotions before the benefit of the aforesaid resolution was granted. In absence of any authentic material showing that the cases of those two officers were similar or identical, no inference of discrimination can be drawn. In any view of the matter, the petitioner clearly appears to have been promoted at least thrice before the decisive date of 1.6.1987 and thereafter he has also been promoted as PSI on 14.3.1975.

7. In the facts and for the reasons discussed hereinabove, the petition is found to be misconceived and claim of the petitioner is not sustainable in law. The petition is accordingly dismissed and Rule is discharged with no order as to costs.

(D.H. WAGHELA, J.)

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